formed on the 24th day of August, 1911, by the plaintiffs in error and other persons to the grand jurors unknown was, according to the evidence, devised by the officers of the law, and had its origin in the letter of Inspector Morse, of date May 8, 1911, to his superior officer. And it was so contended in the court below on behalf of the plaintiffs in error, and, further, that the plantiff in error Jung Kim was not a conspirator, but a mere employee of Sam Yick in the transactions in question.

"It is, of course, not a matter for this court to say what conclusion the jury would or should have drawn from the testimony tending to show that the alleged conspiracy was first suggested by the officers of the law, and that they lured the alleged conspirators on to commit the necessary overt act or acts and thus consummate the alleged crime; all of those matters being exclusively for the determination of the jury. And while it may be true that the mere aiding of one in the commission of a criminal act by a government officer or agent does not preclude the conviction of the party committing the crime, yet where the officers of the law have incited the party to commit the crime charged and lured him on to its consummation, the law will not authorize a verdict of guilty. * * *

"In the recent case of Woo Wai *v.* United States, 223 Fed. 412, 137 C. C. A. 604, we distinctly adjudged that it is against public to sustain a conviction for crime where the party or parties are induced to commit it by officers of the government who thereafter ensnare and apprehend them in such commission. In addition to the authorities there cited in support of that conclusion, see, also, Taylor *v.* United States, 193 Fed. 968, 113 C. C. A. 543, decided by this court prior to the decision in Woo Wai *v.* United States, supra; United States *v.* Healy (D. C.), 202 Fed. 349; United States *v.* Jones (C. C.), 80 Fed. 513; United States *v.* Adams (D. C.), 59 Fed. 674; United States *v.* Whittier, Fed. Cas. No. 16,688, 28 Fed. Cas. 594."

Limitation of Actions—Part Payment by One Joint Maker of Note. —It was held in McLaughlin *v.* Head (Or.), 168 Pac. 614, that where one of two joint makers of a note had died, the act of his administrator in making a partial payment on the note did not operate as against the surviving maker to toll the Statute of Limitations. The following is from the opinion:

"The note was purely a joint one, and not joint and several, and the administrator of Lewis was not liable and could not have been sued thereon (8 Corpus Juris, 851; 9 Cyc. 653; 6 R. C. L. 880; Portland Trust Co. *v.* Havely, 36 Or. 234, 59 Pac. 466, 61 Pac. 346). The administrator of Lewis took his estate absolutely unincumbered by this debt, and he could not revive it or in effect create a new obligation by making an unlawful payment upon an obligation from which

the estate had been discharged. In this respect he was a mere volunteer, without any interest in the subject matter, and liable to the estate for the money unlawfully paid out. The estate not being a joint debtor, a payment made by the administrator was ineffectual to toll the statute. This is the effect of the reasoning in the leading case of Slater *v.* Lawson (1 Barn. & Adolph. 396, 20 E. C. R. 533) and in Hathaway *v.* Haskell (9 Pick. Mass. 42), although both of these cases go further and apply the rule to notes which are joint and several as well as to those which, like the one in suit here, are strictly joint."

In Wood on Limitations (4th ed., vol. 1, § 116b, 4) it was laid down that "where a partnership is closed and dissolved one partner cannot bind the other by a partial payment on a firm note so as to take the debt out of the Statute of Limitations without authority." There is cited in support of the text the New York case of Hixon *v.* Rodbourn (67 App. Div. 424), holding that "in an action against the administrator of a deceased member of a firm upon a promissory note made by the firm the surviving partner of the firm is incompetent under section 829 of the Code of Civil Procedure to testify, for the purpose of taking the note out of the Statute of Limitations, that some years after the dissolution of the firm he made, with the consent and by the direction of the deceased partner, a payment on the note from assets of the firm collected by him" (syllabus). The ground of such ruling was that "in such a case the surviving partner is 'a person interested in the event' of the action for the reason that he is liable to pay the whole note, not only because he is the surviving partner, but because the partial payment made by him takes the debt as to him out of the Statute of Limitations, whereas, if the liability for the entire debt be shifted upon the estate of his deceased partner, the liability of the surviving partner will be reduced to at most a simple claim for contribution, and hence he is testifying in his own behalf and interest" (syllabus).

The general rule is also stated in Wood on Limitations (sec. 116-b, 2) that "a partial payment on a note by one of two joint makers will not prevent the running of limitations as to the other maker. Payments made by one joint debtor, with the knowledge, consent and ratification of the other, arrest the running of the Statute of Limitations as to both joint debtors."

In Martin *v.* Hyde (10 App. Div. 490) it was held that "a joint and several note executed by a mother and by her son upon a loan made to both is barred as to the mother after the lapse of six years, where it appears that, during that time, the son, who was the agent of his mother and managed her estate and at times mingled her funds with his own, made every payment of interest thereon out of his own funds, and asked in his individual name for every extension of the time of payment" (syllabus) In Matter of Estate of Philip H. Ne-

her, in the Surrogate's Court, Rensselaer County, N. Y. (57 Misc. 527), it was held that "payments made upon a firm note after the death of one of the partners by the assignee for the benefit of creditors of the surviving partner will not operate to prevent the running of the Statute of Limitations in favor of the estate of the deceased partner" (syllabus).

Principal and Agent—Sale by Principal—Agent's Right to Commission.—In Aluminum Products Co. *v.* Anderson, 164 N. W. 663, in the Supreme Court of Minnesota, it appeared, according to the syllabus by the court, that "plaintiff, an Illinois corporation, appointed defendant exclusive representative for the sale of its products in the States of Minnesota and Iowa, agreeing to pay a stated commission on accepted orders. Defendant had attempted, without success, to obtain an order from a certain Minneapolis dealer; thereafter, while in Chicago, a representative of said dealer gave an order for plaintiff's products to an agent of plaintiff whom he met there, which order was filled by plaintiff and shipped to the dealer at Minneapolis." It was held that defendant was not entitled to a commission on this order. On this point the court said:

"There is nothing controlling in the Minnesota cases. It is well settled in this state, though the authorities elsewhere are not wholly in accord (see Bluthenthal & Co. *v.* Bridges, 91 Ark. 212, 120 S. W. 974, 24 L. R. A., N. S., 279), that a broker who is given the exclusive right to sell a particular piece of real estate or to procure a loan is not entitled to a commission when the principal himself makes a sale or procures the loan unless the agent was the procuring cause. This is true although the broker in fact finds a purchaser or lender after the principal does, but before the broker has notice of this (Dole *v.* Sherwood, 41 Minn. 535, 43 N. W. 569, 5 L. R. A. 720, 16 Am. St. Rep. 731; 3 Notes to Minn. Cases, 171; Baars *v.* Hyland, 65 Minn. 150, 67 N. W. 1148; Mott *v.* Ferguson, 92 Minn. 201, 99 N. W. 804). The principal cannot employ another agent to sell the property or procure the loan, but he is not prevented from doing so himself merely because he has given the broker an exclusive agency. Doubtless the same rule applies to an exclusive agency to sell a particular article of personal property, and probably to a case like that at bar, where the exclusive agency is to sell goods of the principal within a certain territory. Plainly the principal cannot employ other agents to sell in the same territory without being liable to the first agent, but a sale by himself would not entitle the agent to a commission unless the latter had done something towards the sale. In Turnbull *v.* Northwestern Terra Cotta Co. (46 Minn. 513, 49 N. W. 229) it seems to have been conceded, or at least assumed, that an exclusive agency to plaintiff to sell defendant's wares at a specified